

As regards general damage there were no aggravating circumstances, such as an allegation of seduction having relied on the promise of marriage, and accordingly the general damage must be based on the humiliation and anguish which the plaintiff must necessarily have suffered as a result of the events which have taken place. This is a very difficult item to assess but must, I think, have some relation to the other matters to which I have referred above.

I think that there will have been little prejudice to the plaintiff's future life and prospects of marriage. It must, however, be borne in mind that she is now 22, whereas at the time when these events occurred she was only 19 or 20 and that she has accordingly lost those two years. She is, however, still young and her future prospects have not otherwise been marred as it will now be clear that the failure of the marriage was through no fault of hers.

The plaintiff's father is, as I have already said, a clerk in the Marine Department, Penang, aged 48, and he earns about \$500 per mensem. He has 11 children, of whom the plaintiff is one. The defendant is a Revenue Officer in the Customs Department earning about \$244 per month.

Taking all these matters into consideration I think that general damages amounting to \$1,500 will be appropriate in this case.

There is one other matter to which I must refer. The plaintiff's father received \$500 and this sum was received by him on behalf of the plaintiff. This sum was paid in respect of expenses arising out of the engagement and intended marriage of the plaintiff and the defendant. I think that the plaintiff must give credit to the defendant for this sum of money.

I accordingly give judgment for the plaintiff for \$1,500 general damages and \$620.10 special damages (less the amount of \$500 already received) and costs.

Judgment for the plaintiff.

Solicitors: *Jag-Jit Singh; Natha Singh & Subbiah.*

CHOP CHUAH SEONG JOO v. TEH CHOOI NAI & ORS.

[O.C.J. (Hepworth J.) January 18, 1963]

[Penang — Civil Suit No. 181 of 1962]

Landlord and Tenant — Application for Certificate under Control of Rent Ordinance, 1956, s.12(1)(m) — Board's "order" containing ultra vires condition — Whether Board's "order" is a "decision" appealable on a point of law — Control of Rent Ordinance, 1956, s.11.

Certiorari — Whether remedy available to quash "decision".

Declaration — Whether remedy applies if there is right of appeal — Principles applicable.

The plaintiffs were tenants of the defendants in respect of rent controlled premises. On September 13, 1961 the defendants applied to the Rent Assessment

A Board for a certificate that it was in the interest of the public that the defendants be permitted to demolish the premises for the purposes of rebuilding. The Board made an order to such effect and ordered the plaintiffs to vacate the premises. On December 20, 1961 the plaintiffs filed a notice of appeal under the provisions of section 11 of the Ordinance, which appeal was not proceeded with. On June 26, 1962 the plaintiffs issued the present writ for a declaration that the whole of the order made by the Board was invalid.

Held: (1) the "order" here was the formal expression of a decision of the Board and therefore was appealable under section 11 of the Control of Rent Ordinance;

(2) since an adequate alternative remedy was available to the plaintiffs, a declaration should not be granted.

C Cases referred to:—

- (1) *Teh Say Mooi v. Tan Chor Leng* [1950] M.L.J. 90.
- (2) *Sin Hock Ann v. Goh Siew Chiang* [1949] M.L.J. 62.
- (3) *Foong Kooi v. Wong Ching* [1950] M.L.J. 159.
- (4) *Badat bin Drani v. Tan Kheat* [1953] M.L.J. 67.
- (5) *Barnard v. National Dock Labour Board* [1953] 2 Q.B. 18.
- (6) *Francis v. Yiewsley* [1957] 2 Q.B. 136.
- (7) *Kannappa Chettiar v. Letchu-Manan Chettiar* [1952] M.L.J. 188 at p. 189.
- (8) *Vine v. National Dock Labour Board* [1956] 1 All E.R. 1 at page 13.

CIVIL SUIT.

E *Ng Ek Teong* for the plaintiffs.

C. O. Lim for the defendants.

Cur. Adv. Vult.

F **Hepworth J.:** The plaintiffs are a firm carrying on business at premises No. 143, Cheok Sah Place, Bukit Mertajam, Province Wellesley, of which they are the tenants. The defendants are the owners of the said premises No. 143, Cheok Sah Place and are the landlords of the plaintiffs. The plaintiffs are praying for a declaration that the whole of an order made by the Rent Assessment Board, Province Wellesley, in application No. 2 of 1961 dated the 11th December, 1961, relating to the said premises No. 143, Cheok Sah Place is invalid.

G The somewhat curious history of this matter is as follows. On the 13th September, 1961, the defendants as owners of the said premises and landlords of the plaintiffs applied to the Rent Assessment Board, Province Wellesley, (hereinafter referred to as the Board) in application No. 2 of 1961, for a certificate in terms of section 12(1)(m) of the Control of Rent Ordinance, 1956, (hereinafter referred to as the 1956 Ordinance) in respect of the said premises. The Board heard the parties on the 10th November, 1961, and on the 11th December, 1961, issued a document in the following terms:—

"Rent Assessment Board, Province Wellesley.
Area of District Council, Central Province Wellesley.
Control of Rent Ordinance, 1956.
Application No. 2 of 1961.

Between

1. Teh Chooi Nai
2. Lily Heah (m.w.)

3. Lee Gaik Lan (m.w.)
all of No. 172, Market
Road, Bukit Mertajam,
Province Wellesley.

Applicants.

— And —

Chop Chuah Seong Joo of No.
143, Cheok Sah Place, Bukit
Mertajam, Province Wellesley.

Respondents.

Upon the application of Teh Chooi Nai, Lily Heah and Lee Gaik Lan, the applicants abovenamed and upon hearing counsel for the applicants and in the absence of counsel for the respondents the Board is satisfied that the owners of the premises No. 143, Cheok Sah Place, Bukit Mertajam, Province Wellesley, intend to demolish them for the purpose of rebuilding and in its opinion it is in the public interest that they should be permitted to do so. The Board orders that the respondents do vacate the said premises with effect from 1st March, 1962, and on surrendering possession of the said premises to the applicants on or before the 1st day of March, 1962, the applicants are to pay to the respondents a sum of \$672 as compensation.

Dated at Butterworth, this 11th day of December, 1961.

(L.S.) (Signed) Illegible
President,
Rent Assessment Board,
Province Wellesley."

The plaintiffs contended (and still contend) that this document is an order, that the Board had no jurisdiction to make it, and that such order is *ultra vires* the powers conferred upon the Board by the 1956 Ordinance. Accordingly the plaintiffs filed a Notice of Appeal on the 20th December, 1961, under the provisions of section 11 of the 1956 Ordinance. Section 11 of the 1956 Ordinance reads as follows:—

"11. (1) An appeal shall lie on a point of law from any decision of the Board.

(2) Such an appeal may be brought by any party aggrieved by the decision of the Board and shall be brought before the High Court by means of a notice of appeal lodged within fourteen days after the date on which the decision was made.

(3) The procedure governing such appeals to the High Court shall be the same as for appeals to the High Court from decisions of Sessions Courts in civil matters."

On the 30th January, 1962, the defendants' solicitors wrote to the President of the Board to inquire what the position was with regard to the appeal. A reply was received on the 2nd February, 1962, from the President stating that a letter had been sent to the plaintiffs' then solicitors on the 12th January, 1962, requesting them to forward \$5 fees for grounds of decision and also to deposit \$250 into Court for costs within 14 days. This is in accordance with the provisions of Order XXXIX of the Subordinate Courts Rules, 1950, which relate to appeals to the High Court from Subordinate Courts, including the Sessions Court. This period had expired without these sums being received and as the provisions of rule 2(5) of Order XXXIX had thus not been complied with the President of the Board stated that he presumed that the plaintiffs were not proceeding with the appeal. Since then no application has been made by the plaintiffs under Order XXXVI rule 7 of these

A Rules for the enlargement of time in which to deposit and lodge these sums in court nor has any further action been taken by the plaintiffs in this appeal.

On the 8th January, 1962, (four days prior to the date of the letter from the Board to the plaintiffs' then solicitors it will be noted) the plaintiffs' then solicitors filed a notice of motion in the High Court at Penang for an order that the whole of the decision of the Board made in application No. 2 of 1961 on the 11th December, 1961, be reversed or set aside on the ground that the decision and the order were wrong in law and against the weight of evidence. On the 16th March, 1962, this motion, on being called on for hearing in the High Court, Penang, was withdrawn, because the plaintiffs' then solicitors had come to the conclusion that to claim the relief sought by motion was the wrong procedure, and the costs of the application were ordered to be paid by the plaintiffs to the defendants.

On the 20th March, 1962, the defendants issued a summons for possession of the said premises No. 143, Cheok Sah Place in the Sessions Court at Bukit Mertajam. On the 14th April, 1962, a defence to this summons was filed by the plaintiffs.

On the 26th June, 1962, the writ in this action was issued and on the 17th July, 1962, the defence was filed. In paragraph 4 of the defence the defendants contend that the application by way of a writ for a declaration is bad in law and that the remedy of the plaintiffs is by way of appeal against the order of the Board under the provisions of section 11 of the 1956 Ordinance.

The hearing of the summons for possession in the Sessions Court has been postponed pending the disposal of this action.

On the case coming on for trial it was agreed by counsel for both the plaintiffs and the defendants that the issue raised in paragraph 4 of the defence should be disposed of first, because if the contentions of the defendants as pleaded in paragraph 4 of the defence were to succeed then that was an end of the matter. It was agreed that as this issue was raised by the defendants that Mr. C. O. Lim, counsel for the defendants, should open.

Mr. Lim contends on behalf of the defendants that as the proceedings on appeal and the proceedings on the motion have come to an end the plaintiffs are precluded from coming to the Court and asking for a declaration. He contends that when a certificate has been granted by the Board under section 12(1)(m) of the 1956 Ordinance that certificate constitutes a decision of the Board and is accordingly appealable under section 11. He is prepared to concede that the order to the plaintiffs to vacate the premises with effect from the 1st March, 1962, is *ultra vires* the powers of the Board, but he submits

that this is not part of the certificate but a condition attached to the grant of the certificate, that no attempt has ever been made to enforce it, and that in any event the case of *Teh Say Mooi v. Tan Chor Leng* ⁽¹⁾ is authority for saying that the fact that to a decision of the Board is attached a condition which is *ultra vires* does not invalidate that decision. He maintains that there was a right of appeal against the grant of the certificate, that when an appeal was commenced it was not proceeded with and accordingly the matter has been adjudicated upon. He states that it is a rule of law that there must be an end to litigation.

The plaintiffs contend that:—

- (i) section 11 only provides for an appeal from a decision of the Board and in this case the Board has made an order and there is no appeal from an order of the Board;
- (ii) irrespective of whether there is a right of appeal or not *certiorari* does not lie to quash an order which is wholly void;
- (iii) even if *certiorari* did lie that would be no bar to a declaratory suit; and
- (iv) a declaratory suit itself is therefore the only suitable remedy.

Mr. Ng Ek Teong on behalf of the plaintiffs traced the history of section 11. That section in the 1948 Ordinance read as follows:—

"11. (1) No appeal shall lie from an order of the Board except on a point of law from an order giving or refusing possession of premises.

(2) Such an appeal may be brought by any party aggrieved by the order of the Board and shall be brought before the High Court by means of a notice of appeal lodged within fourteen days after the date on which the order was made."

In the case of *Sin Hock Ann v. Goh Siew Chiang* ⁽²⁾ it was held by Laville J. that section 11 as thus enacted did not give a right of appeal against a decision of the Rent Assessment Board giving permission to sue for ejectment and, indeed, prohibited any such appeal on the ground that such a decision was not an "order" of the Board and that in any event the Board had no power to make "an order giving or refusing possession of premises".

The provisions of section 11 were then altered by section 9 of the 1949 Ordinance which read as follows:—

"The following section is hereby substituted for section 11 of the principal Ordinance:—

11. No appeal shall lie from an order of the Board except on a point of law."

It would appear that the retention of the word "order" in the new section could be regarded as indicating it to be the intention of the Legislature that there should still be no appeal from a decision of the Board giving or refusing permission to sue for ejectment. This view was taken by Hill J. in the case of *Foong Kooi v. Wong Ching (f)* ⁽³⁾.

Section 11 was again amended by section 3 of the 1952 Ordinance which read as follows:—

A "The following section is hereby substituted for section 11 of the principal Ordinance:—

11. An appeal shall lie on a point of law from any decision of the Board."

B This amendment used the word "decision" in place of the word "order" for the first time, but by virtue of the omission of the previous subsection (2) the High Court had no jurisdiction to entertain appeals from Rent Assessment Boards.

The 1955 Ordinance put back subsection (2) and thereafter the provisions of section 11 were similar to those incorporated in the 1956 Ordinance.

C In support of their first point the plaintiffs rely on the judgment of Hill J. in *Foong Kooi's* case, in which the learned Judge stated that he was "unable to construe the relevant sections of the Control of Rent Ordinance as conveying any indication that an order of the Board is synonymous with and to be regarded as the same as a decision of the Board relating to an application made under section 12". They argue that as a decision of the Board and an order of the Board are not the same thing, and as the document of the 11th December, 1961, is an order, and as section 11 only allows for appeals against decisions, therefore the plaintiffs have no right of appeal under section 11.

E In support of their second point the plaintiffs rely on the case of *Badat bin Drani v. Tan Kheat* ⁽⁴⁾ in which Briggs J. held that *certiorari* would issue to quash an order which was voidable but not ordinarily an order which was wholly void. The plaintiffs say that as the Board has made an order which is void because it is *ultra vires* their powers *certiorari* does not lie.

F The plaintiffs refer to *Barnard v. National Dock Labour Board* ⁽⁵⁾ in support of their third point that even if *certiorari* does lie that is no bar to a declaratory suit. For what it is worth (I do not think it is of importance in this case) I do not think that case went quite as far as that. What was said in that case on this point was that the remedy by *certiorari* is hedged round by limitations and may not be available. If it is not available and a remedy is needed then the Court can intervene by declaration.

H The plaintiffs therefore argue that in view of the above on the facts and the law of this case a declaratory suit is the only suitable remedy.

I Mr. Ng Ek Teong on behalf of the plaintiffs further argues that a declaratory suit is available not only if a right of appeal is available and has not been exercised but also if there has been an appeal and that appeal has been dismissed. In support of the first part of this submission he quotes *Francis v. Yiewsley* ⁽⁶⁾, but in support of the second part he quoted no authority.

I will first of all deal with the question of "decisions" and "orders". Referring to the amendment to section 11 made by section 3 of the 1952 Ordinance Thomson J. (as he then was) in the case of *Kannappa Chettiar v. Letchumanan*

Chettiar⁽⁷⁾ stated that in his view had subsection (1) only of the original section 11 been amended and had subsection (2) remained the position would have been tolerably clear and it would have been possible without unduly straining the accepted canons of construction to hold that the section gave a right of appeal on a point of law from any decision of the Board, that such appeal was to the High Court, and that the High Court had jurisdiction to entertain it. As subsection (2) has now been replaced I would respectfully adopt these observations and apply them to section 11 of the 1956 Ordinance.

The application to the Board was, as has been stated, an application under section 12(1)(m) for a certificate and before granting such a certificate the Board has to be satisfied of two things:—

- (1) that the owner of the premises intends to demolish them for the purpose of rebuilding; and
- (2) that it is in the public interest that he should be permitted so to do.

It cannot be argued that the Board when it has made up its mind whether it is satisfied or not has not made a decision. What else has it done? It does not seem to me to alter the situation that that decision is subsequently incorporated in what might be loosely described as a formal order. Whereas all orders of the Board may not also be decisions of the Board in circumstances similar to those in this case I do not see how such an "order" can be anything else than the formal expression of a decision of the Board. It should be noted in the quotation from the judgment of Hill J. in *Foong Kooi's* case referred to above that the learned Judge specifically refers to decisions of the Board in relation to applications made under section 12.

The proviso to section 12(1)(m) of the 1956 Ordinance provides that the Court must be satisfied that the owner of the premises has complied with any order or conditions which the Board may have seen fit to make or impose. "Court" is defined in section 2 of the 1956 Ordinance as meaning any Court of the Federation of competent jurisdiction. It is to be noted that the Court must take cognisance of any such order or condition and it is therefore open to the Board to attach orders or conditions to their decision which must in due course be considered by the Court. These orders or conditions can however only be directed at the owner, so that in the present case there is no doubt that the provision ordering that the tenants, the plaintiffs, should vacate the premises with effect from the 1st March, 1962, is *ultra vires* the powers of the Board. But *Teh Say Mooi's* case referred to above is authority for saying that where the Board has reached a decision under section 12 the fact that some condition is added which is *ultra vires* the powers of the Board does not invalidate the Board's decision. When making the order for the tenants to vacate the premises the

A Board was clearly purporting to act under the proviso to section 12(1)(m).

I hold therefore that what we are dealing with here is a decision of the Board and that that decision was appealable on a point of law under section 11 of the 1956 Ordinance.

B The power to make a declaratory judgment is a discretionary one; the discretion should be exercised with care and caution and judicially with regard to all the circumstances of the case and, except in special circumstances, should not be exercised unless all parties interested are before the Court. It will not be exercised where the relief claimed would be unlawful or unconstitutional, or inequitable for the Court to grant, or contrary to the accepted principles upon which the Court exercises its jurisdiction. The Court will not make a declaratory judgment where the question raised is purely academic, or the declaration would be useless or embarrassing, or where an adequate alternative remedy is available, and will be slow to make a declaration as to future or reversionary rights; a declaration that a person is not liable in an existing or possible action is one that will rarely be made, although it is not beyond the power of the Court in a very exceptional case to make such a declaration. (*Halsbury's Laws of England*, 3rd edition, Volume 22, page 749, paragraph 1611).

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I can find nothing in the authorities quoted by Mr. Ng Ek Teong to support his submission that a declaratory suit will lie even if there has been an appeal and that appeal has been dismissed. *Barnard v. National Dock Labour Board* is authority for saying that in proper cases where persons would otherwise be without a remedy for an injustice, the Court has a discretionary power to intervene by way of declaration and injunction in the decisions of statutory tribunals. Parker L.J. (as he then was) in *Vine v. National Dock Labour Board*⁽⁸⁾, in which a declaration was refused, distinguished that case from *Barnard's* case, explaining that "unless a declaration were given in *Barnard v. National Dock Labour Board* it was impossible to adjudicate on the point which had arisen".

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The case of *Francis v. Yiewsley, supra*, which Mr. Ng Ek Teong quotes in support of his submission that failure to exercise a right of appeal does not constitute a bar to applying to the Court for relief by way of a declaratory judgment can be distinguished from the present case. The judgment in that case was based on the fact that in the opinion of McNair J. in the particular circumstances of that application the indications in the statute concerned were that the applicant should have a right to come to the Court for a declaration. The learned trial Judge explained the position as follows:—

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"Contrast is drawn between a case in section 24(1) and in section 24(3). Section 24(1) deals with the case of a local planning authority taking steps pursuant to an enforcement notice other than an enforcement notice requiring the discontinuance of any use of land, and provides that if they do take such steps the local planning authority can recover the cost of a simple contract debt

in any court of competent jurisdiction, and if the owner failed to appeal to the court of summary jurisdiction he shall not be entitled in proceedings under that subsection, that is, before any court of competent jurisdiction, to dispute the validity of the action taken by the local authority upon any ground which could have been raised by such an appeal. There is the very precise exclusion of the subjects' ordinary rights, but it is limited to that one case where the local authority are suing to recover the cost of steps taken pursuant to that form of enforcement notice.

When one comes to section 24(3) there is no such provision, and in my judgment there is no reason why one should read into that section what is contended for by the defendants, namely, that if the owner does not exercise a right of appeal under section 23(4) within the 28 days he is thereby precluded from raising in any court the points against the enforcement notice."

The prohibition against disputing the validity of the action taken under section 24(1) and the lack of any such prohibition in connection with section 24(3) was read as indicating that other action was intended to be available in a case coming within section 24(3). There is no such indication in the 1956 Ordinance. By section 11 it is clear that the Legislature intended that there should be no appeal from any decision of the Board on a question of fact, but that there should be an appeal on a point of law and that that appeal should go to the High Court.

In *Badat bin Drani v. Tan Kheat*, *supra*, Briggs J. held that the making of an order of *certiorari* was discretionary and refused to make an order in that case because, *inter alia*, the applicant had failed to avail himself of the normal remedy of appealing in the High Court.

In the present case the plaintiffs were not without a remedy. They were specifically given a right of appeal on a point of law by section 11 of the 1956 Ordinance. They have suffered no injustice because they have only themselves to blame for not pursuing the appeal. In my opinion section 11 of the 1956 Ordinance provides for an aggrieved party an entirely adequate alternative remedy and accordingly this is not a case in which a claim to a declaration should be entertained.

The plaintiffs' claim is dismissed with costs.

Claim dismissed.

Solicitors: *Braddell & Ramani; Lim, Lim & Oon.*

TAN HONG CHIT v. LIM KIM WAN

[O.C.J. (Hashim J.) January 19, 1963]

[Kota Bharu — Originating Motion No. 3 of 1962]

Land Laws — Malay reservation land held by non-Malay — Transfer to another non-Malay — Whether approval of Ruler-in-Council required — Malay Reservation Enactment, 1930, ss.3(i) and 13A(iii).

Under section 13A(iii) of the Malay Reservation Enactment, 1930, when a piece of land in the Malay Reservation area is registered in the name of a non-Malay who had acquired the land prior to the creation of the Malay Reservation the non-Malay can transfer or charge the land to any non-Malay and any subsequent transfer or charge to a non-Malay can be effected without

obtaining the approval of the Ruler-in-Council. But once a non-Malay registered owner transfers or charges the land to a "Malay" as defined in section 3(i) of the Enactment then the new Malay registered owner cannot transfer or charge the land to a non-Malay without obtaining the approval of the Ruler-in-Council.

ORIGINATING MOTION.

Hwang Yang Choo (Wan Mustapha bin Haji Ali with him) for the applicant.

Isahak bin Abdul Hamid for the respondent.

Hashim J.: This is an application by way of motion that "Presentation No. 891 of 1950 Transfer Jual Janji No. 15 of 1950, and Presentation No. 2905 of 1950 Transfer Jual Janji No. 84 of 1950 be set aside as they are *ultra vires*, the Malay Reservation Enactment, 1930", that is to say, the transfers were registered without obtaining the approval of the Ruler-in-Council.

It is not disputed that the contracting parties to the two Jual Janji transfers are non-Malays. Evidence has been adduced to show that the administrative district of Kota Bharu was declared a Malay Reservation area by Notification No. 56 of 1930 dated 9th December, 1930. It is not disputed that Lots 26, 27 and 29, section 2, Kota Bharu Town are in the administrative area of Kota Bharu. It is also not disputed that these three lots were registered in the names of non-Malays before 9th December, 1930 and were still registered in the names of non-Malays on 9th December, 1930.

Mr. Hwang for the applicant argued that the provisions of section 13A of the Malay Reservation Enactment, 1930, meant that when land was registered in the name of a non-Malay at the time the land was included in a Malay Reservation area, the registered owner, the non-Malay could transfer or charge the land to another non-Malay without obtaining the approval of the Ruler-in-Council but any subsequent transfer or charge of the land to a non-Malay had to get the approval of the Ruler-in-Council.

In my opinion, the provisions of section 13A(iii) of the Malay Reservation Enactment, 1930, are relevant to this Motion. It reads:

"Nothing in this section shall prevent the transfer or transmission of the right or interest in reservation land of any person not being a Malay to any other person not being a Malay always provided that such right or interest shall have been acquired prior to the creation of the Malay Reservation in which the land is included. (*Amended by Enactment No. 3 of 1949.*)"

I would interpret this section as follows. When a land in the Malay reservation area is registered in the name of a non-Malay who has acquired the land prior to the creation of the Malay Reservation the non-Malay can transfer or charge the land to any non-Malay and any subsequent transfer or charge to a non-Malay can be effected without obtaining the approval of the Ruler-in-Council. But once a non-Malay registered owner transfers or charges the land to a Malay as defined in section 3(i) of the Enactment then the new Malay registered owner cannot